

Remarks/Arguments:

In response to the October 23, 2006 Office Action, Applicant respectfully offers the following remarks and substantive argument. Claims 1 through 18 currently are pending and have been rejected from allowance.

The Office Action rejected independent claims 1, 3 through 5, 7, 8, 11, 12, 13, and 17 under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,179,735 ("Thomanek") in combination with U.S. Patent Application Publication No. US 2004/0070823 A1 ("Radna"), and in further combination with newly cited U.S. Patent No. 5,469,578 ("Mattes"). Dependent claims 2, 6, 9, 10, 14, 15, 16, and 18 were also rejected under 35 U.S.C. § 103(a) as being unpatentable over the *Thomanek*, *Radna*, and *Mattes* trilogy of patents and patent application in combination with one or more additional secondary references.

A. Claim 1 Recites Patentable Subject Matter

As currently pending, claim 1 recites:

An apparatus for head mounting gear for hands free operation, comprising:

a head mounting means comprising a non-rigid encircling band adapted to encircle a head of a wearer at the wearer's forehead region, and a non-rigid top band adapted to go over the top of the head of the wearer and connected to said non-rigid encircling band;

a mounting bracket mounted to said non-rigid encircling band and to said top band, said mounting bracket having a pivot means;

a support bar having a proximal and distal end, said support bar being pivotally mounted at its proximal end to said pivot means of said mounting bracket;

said support bar being lockable by a detent mechanism in a position for use and a position for storage;

a quick release mounting mechanism mounted on the distal end of said support bar;

gear mounted to said quick release mounting mechanism being selected to be binoculars or a range finder; and

wherein said gear may be used without being held by hand.

(Emphasis added).

The specific limitation for the encircling band as including within independent claim 1, and the related dependent claims, is found at page 6, first and second paragraph noting that "the encircling band 14 and headband 16 are provided with length adjustment means, which may be any suitable means." Also, each of Figs. 1, 2, and 3 specifically show the encircling band 14 being placed in the region of the wearer's forehead, and completely encircling the wearer's head at the forehead region. There are no other elements attached or connected to the encircling band 14 to complete the "encircling", nor does the encircling band 14 extend to the lower part of the wearer's cranium or lower portions of the wearer's head.

By contrast to the pending disclosure and claims, *Thomanek* teaches and shows a "head piece 47 [] formed of a laminated structure." *Thomanek*, col. 8, lines 59 through 63. The head piece 47 is made of several distinct elements, including a "U-shaped band portion 120," a "back pad 126," a "top webbing or strap 130," and "side webbing" or a "pair of side straps 131." As specifically disclosed by *Thomanek*, the head piece, including the U-shaped band portion 120, is made from a "carbon textile," col. 10, lines 3 through 5, using an epoxy and hardener. *Thomanek* describes the head piece as being "stiff" or rigid. *Thomanek*, col. 10, lines 23 through 24.

As previously noted, two points of distinction are that there is no encircling band in the *Thomanek* invention that goes around the wearer's forehead region. Moreover, there is no top band in the *Thomanek* invention that connects to a mounting bracket and to any encircling band. In *Thomanek*, the side straps 131 cross behind the wearer's head *below or in the vicinity of the wearer's ears* and then connect to a chin piece 132.

Accordingly, by specific design, the *Thomanek* head piece does not have an encircling band and a top band that connect to each other and to a mounting bracket. Moreover, there is no suggestion or motivation in *Thomanek* for the head piece to include an encircling band to be worn around the wearer's forehead region, and there is no suggestion or motivation in *Thomanek* for a top band to be connected to any encircling band.

Similarly, the *Radna* patent application discloses the use of "any type of known headgear." *Radna*, page 3, paragraph [0039]. The description of the *Radna* headgear necessary to hold the video-recording mechanism for surgery, is that the headgear includes "a front band 2 and a headband 3, mounted on the head of the user. The frontal band 2 and/or the headband 3 may be made of a flexible hard plastic material that is easy to clean and disinfect." (*Radna*, page 3, paragraph [0039]) (emphasis added).

As in the *Thomanek* patent, there is no suggestion or motivation provided in the *Radna* patent application to use a flexible single band to encircle the wearer's head in the region of the wearer's forehead, and further having a second single band to go over the top of the wearer's head to connect to any mounting bracket. Both the *Thomanek* patent and *Radna* patent application disclose the use of hard or rigid head pieces that are comprised of multiple interconnecting pieces and elements, most of which are constructed of rigid carbon textile or a rigid thermoplastic material. The pending application discloses a much more simplified headgear comprising two interconnect pieces, both made of a non-rigid and flexible strapping material.

Further the newly cited *Mattes* patent similarly does not disclose, show or teach the use of a single encircling band that is fully located about the wearer's forehead region. As noted in the Office Action, the "headgear mount" is comprised of at least two elements, being cranial frame 22 and posterior girth strap 44. In the *Mattes* patent, there is not a unitary element encircling the wearer's head.

Indeed, *Mattes* discloses and explains the many interconnecting elements necessary to build the *Mattes* headgear mount. These elements include cranial frame 22 "positioned proximate the frontal tuber and temporal regions of the wearer's cranium," *Mattes*, col. 2, lines 61 through 62, and "[a] posterior girth strap 44 [having] a first end 46 and a second end 48. First end 46 of posterior girth strap 44 is attached to second looped end 42 of radial strap 38. Second end 48 of posterior girth strap 44 is secured to first looped end 40 of radial strap 38. Posterior girth strap 44 is positioned proximate the posterior pole region of the wearer's cranium when worn." *Mattes*, col. 3, lines 4 through 10.

Accordingly, the *Mattes* disclosure shows at least two elements, cranial frame 22 and posterior girth strap 44 necessary to build up the disclosed head gear that is required to hold the heavy goggles. As shown in Fig. 1, cranial frame 22 does not encircle the wearer's head at the wearer's forehead region. Instead, at the posterior region, cranial frame 22 is located at a much lower region of the wearer's head. Moreover, the cranial frame 22 has a pad 28 to provide the wearer with some comfort due to the weight of the goggles being held by the headgear mount. It is a different element, posterior girth strap 44, that instead completes the encircling of wearer's head at the wearer's forehead region. Applicant notes that posterior girth

does not directly connect to cranial frame 22. Instead, posterior girth strap 44 connects to radial strap 38, which in turn has looped ends 40 and 42, through which the cranial frame 22 extends. There is no equivalent radial strap 38 in the claimed invention because the encircling band 14 does not need to have additional elements located at the lower back portion of the wearer's head to hold the band in place.

Accordingly, the advantages of the subject matter of claims 1 through 18, including having a single element to encircle the wearer's head at the wearer's forehead region are not attained or suggested by the *Thomanek* patent or the *Radna* patent application or the *Mattes* patent, either individually or in combination. As explained by Judge Rich in *In re Civitello*, 144 USPQ 10, 12 (CCPA 1964), when a claimed feature is not disclosed by the reference, the reference cannot render the claim obvious:

Since Haslacher fails to disclose the feature of the claim relied on, we do not agree with the patent office that it would suggest modifying the Craig bag to contain the feature. The Patent Office finds the suggestion, only after making a modification which is not suggested, as we see it, by anything other than appellant's own disclosure. This is hindsight reconstruction. It does not establish obviousness. (Emphasis in original.)

Thus, Applicant respectfully does not agree with the Examiner that the *Thomanek* patent, either individually or in combination with the *Radna* patent application or the *Mattes* patent, support a prima facie case of obviousness.

B. Dependent Claims

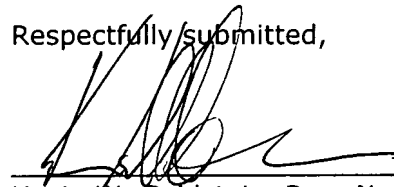
Because claims 2 through 18 depend directly from claim 1, or claims that are dependent upon claim 1, which Applicant contends is a patentable claim, then dependent claims 2 through 18 claims are also patentable. *See, e.g., In re McCarn*, 101 USPQ 411, 413 (CCPA 1954) ("sound law" requires allowance of dependent claims when their antecedent claims are allowed). Moreover, Applicant respectfully contends that claims 2 through 18 are each non-obvious in view of the applied references.

C. Conclusion

Claims 1 through 18 are presented, and remarks and argument are presented to explain the basis and reasoning for distinguishing these claims over the cited art. Applicant respectfully contends that the rejections under 35 U.S.C. § 103(a) should be withdrawn. Favorable action is earnestly solicited by the Applicant. Finally, the Examiner is invited to call the applicant's undersigned representative if any further action will expedite the prosecution of

the application or if the Examiner has any suggestions or questions concerning the application or the present Response. In fact, if the claims of the application are not believed to be in full condition for allowance, for any reason, the applicants respectfully request the constructive assistance and suggestions of the Examiner in drafting one or more acceptable claims pursuant to MPEP § 707.07(j) or in making constructive suggestions pursuant to MPEP § 706.03 so that the application can be placed in allowable condition as soon as possible and without the need for further proceedings.

Respectfully submitted,



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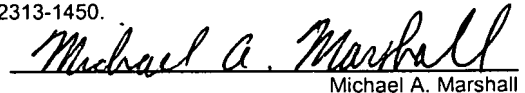
Any response in this application requiring a petition for extension of time, but failing to include one, should be treated as though it does include the required petition for extension of time.

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